

California Victim Compensation and Government Claims Board
Open Meeting Minutes
April 28, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Anna M. Caballero, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, April 28, 2011, at 10:04 a.m. Also present were Board members Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller, and Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpf, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

Chairperson Caballero announced that she was very pleased to serve as Chairperson and welcomed everyone to the meeting. Chairperson Caballero stated that her background includes 25 years as a trial attorney and Executive Director of Partners for Peace, a nonprofit focused on violence prevention, more specifically, reducing gang violence from a prevention prospective. Prior to her appointment to Secretary of the State and Consumer Services Agency, she served in the California Assembly for four years.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the March 17, 2011, Board Meeting

The Board voted to approve the minutes of the March 17, 2011, Board meeting. Chairperson Caballero abstained from the vote.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was provided.

Item 3. Executive Officer's Statement

Executive Officer Julie Nauman reported the following events she participated in recognition of National Crime Victim's Rights Week, April 10-16, 2011:

VCGCB Crime Victim's Rights Rally

On Monday, April 11 the VCGCB hosted its 2nd Annual Crime Victims' Rights Week rally outside its headquarters. The Executive Officer was joined by Secretary and VCGCB Chairperson Anna Caballero; San Bernardino County District Attorney and VCGCB Board member Michael Ramos; Assembly Member and Chair of the Assembly Select Committee on Domestic Violence, Fiona Ma; and Mike Dayton, Acting Secretary, CalEMA. Other special speakers included David Wallin, a crime survivor who shared his personal and inspiring story about his wife who was murdered in 1978 in a high profile case in Sacramento and Don Betz, founding member of Bikers Against Child Abuse, who spoke about the work his organization is doing on behalf of child abuse victims. Following the rally, speakers walked to the West Steps of the State Capitol for the annual March on the Capitol hosted by Crime Victims United of California and the California Correctional Peace Officers Association. Governor Brown attended the event and spoke on behalf of victims' rights and the need to protect the rights of all victims throughout California.

Sonoma County 8th Annual National Crime Victims' Rights Week Award Luncheon

On Thursday, April 14, the Executive Officer was honored to be the keynote speaker with along with Sonoma County District Attorney Jull Ravitch in Santa Rosa.

Seventh Annual Justice Awards in San Francisco

On Thursday, April 14, the Executive Officer attended the Justice Awards in San Francisco with San Francisco District Attorney George Gascón.

2010 Outstanding Citizen Award and Outstanding Service Commendation

On Friday, April 15, the Executive Officer attended the 2010 Outstanding Citizen Award and Outstanding Service Commendation ceremony in Sacramento hosted by Sacramento County District Attorney Jan Scully. The ceremony featured several victims from Sacramento and the district attorneys instrumental in the resolution of their cases.

Orange County Annual Crime Survivors Awards Banquet

On Friday, April 15, the Executive Officer attended the Orange County Annual Crime Survivors Awards Banquet honoring several law enforcement agencies throughout Orange County and the Los Angeles area.

National Denim Day

On Wednesday, April 27, the VCGCB recognized National Denim Day. The VCGCB held its 2nd annual denim drive to help others in need. This year the VCGCB extended the drive to run two weeks and invited some of our sister agencies to participate in the donation drive. Donation boxes were provided to the California Department of Corrections and Rehabilitation, the California Emergency Management Agency, and the Health and Human Services Agency headquarters so that their staff could also donate. VCGCB collected 161 pairs of jeans in this effort and the donated articles were given to WEAVE, Women Escaping a Violent Environment, Sacramento's crisis intervention service provider for victims of domestic violence and sexual assault.

Applications from victims of sexual assault and domestic violence make up nearly 30 percent of CalVCP applications each year. Our efforts in collecting denim will help others become more aware of how prevalent this problem is. National Denim Day first began in 1999 as a rape prevention and education campaign by the advocacy group "Peace Over Violence" as part of an international protest of an Italian High Court's decision to overturn a rape conviction. The conviction was overturned because the victim was wearing tight jeans and the jury determined that she must have consented to the crime because she took them off. In protest, Italian women wore denim jeans to work.

Farewell to Board Member Les Kleinberg

Executive Officer Nauman announced that Board member Les Kleinberg was retiring. Mr. Kleinberg served as State Controller John Chiang's representative since 2006. Ms. Nauman stated that in addition to Mr. Kleinberg serving as a Board member, he is also the Director of Legislative Affairs at the State Controller's Office. Ms. Nauman expressed her sincere pleasure working with Mr. Kleinberg and thanked him for his dedication, hard work, and tremendous support of the VCGCB.

Board member Michael Ramos stated that Mr. Kleinberg is an outstanding member of the Board and he appreciated Mr. Kleinberg's detailed analysis of the Board meeting materials. Mr. Ramos stated that in addition to serving on the Board, Mr. Kleinberg also served on the California District Attorneys Association's Victims Rights Committee where he is very well respected. Board member Ramos wished Mr. Kleinberg well in his retirement.

Board member Kleinberg stated that it was an honor to serve as a member of the Board and thanked Executive Officer Nauman and her staff for their dedication and great work.

Chairperson Caballero congratulated Board member Kleinberg on his retirement.

California Victim Compensation Statistical Report

The Executive Officer presented the California Victim Compensation Program statistical report for fiscal year 2010-2011, covering July 1, 2010, through March 31, 2011. Executive Officer Nauman reported that applications received to date have exceeded last year's figures. Ms. Nauman reported

that staff is working very hard to keep up with the increased workload while at the same time maintaining the CalVCP's average processing time of 61 days. Ms. Nauman thanked CalVCP staff for all of their hard work.

Item 4. Contract Report

The Board voted to approve the following two contracts:

- Twenty Joint Powers (JP) contracts with various counties within the state. The JPs will provide fully verified victims of crime claims to the Board. The one-year JP contracts reflect a 5 percent reduction, pursuant to the Governor's budget.
- Twenty-five Criminal Restitution Compact (CRC) contracts with various counties' criminal justice systems. The CRCs will ensure restitution fines and orders are properly administered in accordance with applicable statutes and promote the appropriate assessment and collection of restitution fines, parole restitution fines, restitution orders, and diversion restitution fees. The three-year CRC contracts reflect a 5 percent reduction, pursuant to the Governor's budget.

Item 5. Proposed Board Meeting Dates for Calendar Year 2011

The Board voted to adopt the proposed meeting dates for the remainder of calendar year 2011, as amended, to change the April 21, 2011, date to April 28, 2011.

Item 6. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, reported the following:

- SB 207 (Kehoe), the Board's first Government Claims Bill of 2011, appropriates nearly \$557,000 which covers claims approved by the Board from December 2010 through November 2010. The bill is scheduled for the Senate Appropriations Committee on May 9.
- SB 139 (Fuentes), the Board's second Government Claims bill of 2011, will cover claims approved by the Board from December 2010 through May 2011. The bill will be set for hearing in the Assembly Appropriations Committee soon.
- AB 898 (Alejo), regarding restitution fines, doubles the minimum and maximum amounts for restitution fines imposed on convicted defendants. For felony convictions, the minimum increases from \$200 to \$400 and the maximum from \$10,000 to \$20,000. For misdemeanors, the minimum increases from \$100 to \$200 and the maximum from \$1,000 to \$2,000. The bill is scheduled for hearing in the Assembly Public Safety Committee on May 3.
- SB 80 (Committee on Budget and Fiscal Review) is the budget trailer bill on state government. The bill, which included language affecting VCGCB's Government Claims Program, was chaptered. The provision requires VCGCB to notify the Joint Legislative Budget Committee at least 15 days prior to allowing a claim of \$500,000 or more to be paid from a current year appropriation for prior year costs. This provision would also apply to multiple claims totaling \$500,000 or more in one year by a single vendor against a single department.
- AB 109 (Committee on Budget), the bill which realigns California's criminal justice system by shifting certain low level offenders, adult parolees, and juvenile offenders from state to local jurisdiction, has been chaptered. Moving inmates from CDCR to local custody may negatively affect restitution collection because systems of collection in county jail are not as established as those in state prison.

Government Claims Program

Item 7. Consent Agenda (Nos. 1- 403)

The Board voted to adopt the staff recommendations for item numbers 1-403, as amended, with the exception of number 63, which was removed pending review of additional information received and numbers 62, 65, 117, 119, 132, 133, 136, and 279, which were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance **Item 62, G594675**

The claimant failed to appear. The Board voted to adopt staff recommendation to partially allow the claim in the amount of \$134.14 rather than \$591.15 as requested by the claimant.

Consent Agenda Appearance **Item 65, G595131**

Lydia Vasquez, claimant, appeared. Victoria Luzzi appeared on behalf of the Department of General Services.

Ms. Vasquez requested payment in the amount of \$1,633.51 for the alleged damage to her vehicle caused by a parking garage gate arm that malfunctioned while she was entering a State of California parking garage operated by the Department of General Services (DGS).

Ms. Luzzi stated that DGS was aware that the gate arm in the parking garage malfunctioned because another car was also damaged as a result of that malfunction and DGS was in the process of repairing it. Ms. Luzzi stated that there is an indemnity clause in place that is included with the parking application that is signed by the applicant. She stated that the indemnification clause holds the State harmless for any damages that occur on State property. Ms. Luzzi stated that the extensive damage to Ms. Vasquez's car could have been avoided if she would have stopped the vehicle after the arm came to rest on it, rather than continuing to go through. Ms. Luzzi further stated that in lieu of the indemnification clause, it would be fair and reasonable to allow the claimant the costs for the actual damages incurred, which, in her opinion, total \$700.00 and would cover the cost of removal of the paint that was left on the vehicle and repair of a small indentation. She also added that since the deductible was not included in the estimate provided by Ms. Vasquez, the \$700.00 recommended by DGS was reasonable.

Board member Kleinberg asked Ms. Vasquez if she repaired her vehicle. Ms. Vasquez stated that she did not repair the vehicle because she was waiting to be reimbursed by DGS. Board member Kleinberg stated that although there was an indemnity clause in place, in this case it appeared as though the State was directly negligent because the State knew that the gate arm was causing damage to vehicles.

Chairperson Caballero stated that the Board must decide whether to allow the claim in the amount of \$1,633.50, which represents full amount requested by the claimant, or to partially allow the claim in the amount of \$700.00, which is the amount recommended by DGS. Chairperson Caballero further stated that the \$500.00 deductible is included in the amount requested by the claimant.

Ms. Luzzi stated that she was not aware that the deductible was included in the amount requested by the claimant.

Ms. Vasquez stated that she included the \$500.00 deductible in the amount claimed because she was not responsible for the damage caused to her vehicle.

Board member Ramos stated that the Board should make the claimant whole. He stated that he was not swayed by the contributory negligence argument presented by Ms. Luzzi because DGS does not know what someone in the same situation as Ms. Vasquez would have done. He further stated that if awarding Ms. Vasquez \$1,100.00, which includes the deductible, would make her whole, then he would make a motion to award the claimant that amount. Board member Ramos made a motion to allow the claim in the amount of \$1,100.00.

Board member Kleinberg asked Ms. Vasquez if \$700 would make her whole. Ms. Vasquez stated that \$700 would only cover the costs to repair the vehicle. She asked the Board to include the \$500.00 deductible because she should not be held responsible for the out-of-pocket expense for the damage to her vehicle caused by DGS.

Board member Ramos agreed with Ms. Vasquez and withdrew his motion to award her \$1,100.00. Board member Ramos made a motion to allow the claim in full in amount of \$1,633.51, which included the costs associated with repairing the vehicle and the claimant's \$500.00 deductible.

The Board voted to allow the claim in the amount of \$1,633.51.

Consent Agenda Appearance
Item 117, G592473

Claimants Jeff Brower and Paul Boley appeared. Johnnie Terry, Branch Chief, Bid, Protest and Dispute Branch, appeared on behalf of the California Department of Transportation (Caltrans).

Brower Mechanical, Inc., (Brower Mechanical) requested payment in the amount of \$92,000 for an unpaid invoice related to an equipment purchase.

Paul Boley stated that Brower Mechanical was awarded a contract to replace a chiller at a Caltrans facility in Rancho Cordova. Mr. Boley stated that a clear scope of work was provided and the equipment was ordered. He stated that when the materials arrived, Brower Mechanical went to the site to discuss scheduling dates with the stationary engineer, but the scope of work changed. He stated that Brower Mechanical provided the stationary engineer with the change order. Mr. Boley stated that he was told that because there was no State budget, Caltrans could not approve the change order and the stationary engineer would not allow Brower Mechanical to perform the work until it was approved. Mr. Boley stated that since the additional work was not approved, Brower Mechanical was not willing to incur any additional costs. He further stated that the State would not approve the change order, the contract expired, and now Brower Mechanical is left with the material cost of equipment that they cannot return to the manufacturer.

Mr. Brower stated that Brower Mechanical only invoiced Caltrans the amount of the equipment. He stated that the equipment is currently housed at his yard and he continues to make monthly payments for the equipment.

Chairperson Caballero clarified that Brower Mechanical was only requesting the materials that were ordered for the project.

Caltrans representative Johnnie Terry stated that the contract is complex, dealing with terms and conditions that are most likely not within the Board's scope, and matter should be resolved in court. He further stated that the contract terms and conditions have specific goals with regard to the requirements of delivery of the chiller system.

Board member Kleinberg stated that it appeared as though the contract did not address the change that was required at the time Brower Mechanical brought in the equipment. Mr. Terry stated there was no amendment to the contract.

Board member Kleinberg asked if the original contract mentioned that in order for the chiller to be replaced, it could not be shut down for any period of time. Mr. Brower stated that it is impossible to replace a chiller in a building without shutting it down.

Mr. Boley stated that there are two chillers that sit side by side at the facility. He stated that when the building was constructed, there were no isolation valves installed in the piping to isolate one chiller from the other. He stated that during the request for bid and when the contract was awarded, one chiller was not operational, which is the one Brower Mechanical was to replace. He further stated that the scope of work did not state that they were to keep the second chiller running during the replacement of the chiller.

Chairperson Caballero asked Mr. Boley if it would have been impossible to replace only one chiller because they were coupled. Mr. Boley stated that Brower Mechanical could not replace one chiller without shutting down the other chiller. He further stated that the scope of work did not state that isolation valves needed to be installed so that the other chiller could continue to run during the replacement of the chiller that they were contracted to replace.

Mr. Boley stated that when the chiller arrived, a project meeting was held wherein they discussed how long the chiller would be down; however, the facility manager told him that he could not allow them to shut it down. Mr. Boley stated that he reviewed the scope of work and it did not state that the chiller had to run during the replacement of the chiller. He further stated that the facility manager agreed that isolation valves needed to be installed. Mr. Boley stated that he provided the change order, which was not approved. He stated that thereafter the contract expired and, in turn, they filed a government claim.

Mr. Terry stated that the contract did stipulate that Brower Mechanical would provide all labor, equipment, associated materials, and anything incidental that was necessary to install the chiller. Mr. Brower stated they were doing everything in the scope of work. He stated that they were going to supply the piping and replace the chiller, but Caltrans would not comply.

Chairperson Caballero asked Mr. Terry if at any point in time it was anticipated that there would be a change order required by Caltrans. Mr. Terry stated he did not know. Chairperson Caballero asked if, once the contract expired, there was any attempt to try to extend the contract. Mr. Terry stated that the contract manager at the time retired and there was no attempt to extend the contract.

Chairperson Caballero stated that the claim should be continued. She stated that the Department of General Services and Caltrans need to come together to get the contract resolved and make the repairs.

Mr. Brower stated that he is still making payments on the equipment and asked the Board if the matter could be resolved in a timely manner. Chairperson Caballero stated that it would be timely because the State does not want to pay twice to have the job performed correctly. Chairperson Caballero expressed her appreciation for Brower Mechanical's patience.

The Board voted to continue the claim to the May 19, 2011, meeting to allow the parties to reach an equitable resolution.

Consent Agenda Appearance
Item 119, G592564

Donna Oliveira, claimant, and Cheryl Harmon, claimant's representative, appeared. There was no appearance by California Highway Patrol. The claimants provided the Board with a police report and transcript of Fidel Perez in support of their claim.

Donna Oliveira requested reimbursement from the California Highway Patrol in the amount of \$5,545.30 for the alleged damage to her vehicle sustained as a result of a hit and run accident.

Board member Ramos stated that there are occasions wherein matters come before the Board that are too complex and outside the Board's authority. Those matters require witness statements and reports and require a judge to look at credibility and make a decision. He further stated those types of claims, similar to the claimants, are much better suited in a court of law. He stated that if the Board makes a motion to adopt the staff recommendation to reject the claim, it is not because the Board does not believe the claimants or that their claim lacked merit, rather, it is because a court of law would be a better place to resolve the matter.

Chairperson Caballero stated that rejecting the claim is a procedural matter because the Board has limited authority.

The Board voted to adopt the staff recommendation to reject the claim as the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Consent Agenda Appearance
Item 132, G594012

The claimant failed to appear. The Board voted to adopt the staff recommendation to reject the claim as the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Consent Agenda Appearance
Item 133, G594213

The claimant failed to appear. The Board voted to adopt the staff recommendation to reject the claim as the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Consent Agenda Appearance
Item 136, G594318

The claimant failed to appear. The Board voted to adopt the staff recommendation to reject the claim pursuant to Government Code section 19838(b), which requires an employee who separates from employment prior to full repayment of an amount owed shall have withheld from any money owing the employee upon separation an amount sufficient to provide full repayment.

Consent Agenda Appearance
Item 279, G595689

The claimant failed to appear. The Board voted to reject the claim as the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Item 8. Aramark Uniform and Career Apparel
Claim Number G592205

Aramark Uniform and Career Apparel requested payment in the amount of \$97,404.39 for uniforms and rental services provided to the California Department of Transportation from July 1, 2009, through November 30, 2009.

The Board voted to allow the claim in the amount of \$97,404.39 under authority of Government Code section 965 (agency pay).

Item 9. Claim of Barbara Haukedalen
Claim Number G594617

The claim was removed from the agenda.

Item 10. Request for Delegation of Authority Under Government Code Section 935.6
by the California State Teachers' Retirement System

The Board voted to adopt the staff recommendation to allow the request by the California State Teachers' Retirement System.

Item 11. Request for Delegation of Authority Under Government Code Section 935.6
by the California Department of Consumer Affairs

The Board voted to adopt the staff recommendation to allow the request by the California Department of Consumer Affairs.

Item 12. Applications for Discharge From Accountability for Collection

The Board voted to adopt the staff recommendation to allow the requests.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:18 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 11:18 a.m. to deliberate on the proposed decisions, numbers 1 through 151.

Open Session

The Board reconvened into open session at 11:32 a.m.

The Board voted to adopt the proposed decisions for numbers 1-151, with the exception of number 124, which was removed and referred to the hearing officer for further consideration.

Adjournment

The Board meeting adjourned at 11:32 a.m.